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Attorneys for Defendants  
VIVUS, INC., LELAND F. WILSON, and  
WESLEY W. DAY, Ph.D.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MERLE KOVTUN, Individually and on  
Behalf of Others Similarly Situated,,

Plaintiff,

v.

VIVUS, INC., LELAND F. WILSON, and  
WESLEY W. DAY, PH.D.,

Defendant.

Case No. 4:10-cv-04957-PJH

**STIPULATION AND [PROPOSED]  
ORDER EXTENDING PAGE LIMITS FOR  
BRIEFING ON DEFENDANTS' MOTION  
TO DISMISS AMENDED COMPLAINT  
AS MODIFIED BY THE COURT**  
The Honorable Phyllis J. Hamilton

Pursuant to Local Rule 7-12, lead plaintiff John Ingram and defendants VIVUS, Inc., Leland F. Wilson, and Wesley W. Day, Ph.D. (collectively, the “Parties”), through their undersigned counsel, hereby stipulate to and seek the Court’s approval of an order extending the page limits for briefing on defendants’ anticipated motion to dismiss the amended complaint.

### **RECITALS**

WHEREAS on April 4, 2011, lead plaintiff timely filed the Amended Class Action Complaint for Violations of the Federal Securities Laws (Dkt. No. 25) (the “Amended Complaint”); and

WHEREAS, pursuant to the Court’s February 3, 2011 Order setting a schedule for the filing of, and response to, the Amended Complaint (Dkt. No. 23), the deadline for defendants to move to dismiss the Amended Complaint is June 3, 2011; and

WHEREAS, the defendants believe that, because of the length of the Amended Complaint, defendants will need additional pages in their opening and reply briefs in support of their anticipated motion to dismiss to fully respond to the allegations; and

WHEREAS, lead plaintiff does not oppose an extension of the page limits for defendants’ opening and reply briefs on the anticipated motion to dismiss to 32 and 22 pages, respectively;

WHEREAS, defendants do not oppose a corresponding extension of the page limit for lead plaintiff’s opposition to defendants’ anticipated motion to dismiss to 35 pages;

### **STIPULATION**

IT IS THEREFORE STIPULATED AND AGREED by the Parties, through their respective counsel of record, that, subject to the Court’s approval, that the page limits for the briefing on defendants’ anticipated motion to dismiss will be as follows:

(a) defendants’ opening brief shall be not longer than 32 pages; and

(b) lead plaintiff’s opposition to defendants’ motion to dismiss shall be not longer than 35 pages; and

(c) defendants reply in support of the motion to dismiss shall be not longer than 22 pages.

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2 SO STIPULATED.

3 DATED: May 24, 2011

HOGAN LOVELLS US LLP

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5 By /s/ Howard S. Caro  
HOWARD S. CARO

6 Attorneys for Defendants  
7 VIVUS, INC., LELAND F. WILSON, AND WESLEY  
8 W. DAY, PH.D.

9 DATED: May 24, 2011

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I, Howard S. Caro, am the ECF User whose ID and password are being used to file this Stipulation And [Proposed] Order Extending Page Limits For Briefing on Defendants' Motion To Dismiss Plaintiff's Amended Complaint. In compliance with General Order 45, X.B., I hereby attest that Azra Mehdi has concurred in this filing.

/s/ Howard S. Caro

HOWARD S. CARO

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**ORDER**

PURSUANT TO STIPULATION, and good cause appearing, the page limits for the briefing on defendants' anticipated motion to dismiss will be as follows:

- (a) defendants' opening brief shall be not longer than <sup>30</sup>~~32~~ pages; and
- (b) lead plaintiff's opposition to defendants' motion to dismiss shall be not longer than <sup>30</sup>~~35~~ pages; and
- (c) defendants reply in support of the motion to dismiss shall be not longer than <sup>20</sup>~~22~~ pages.

IT IS SO ORDERED.

DATED: 5/25/11

